

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 864 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAUDBHAI RAJEMAD DHUKKA

Versus

KULSUMBE W/O ABDULLA RAJEMAD DHUKKA

Appearance:

MRS KETTY A MEHTA for the petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 29/03/2000

C.A.V.JUDGMENT

#. Heard learned counsel for the petitioner.

#. Dispute pertains to the right of way which the defendant - petitioner in the suit is claiming through adjoining land belonging to the plaintiffs - respondents.

#. Learned trial court in the suit filed by the plaintiffs-respondents has declined to grant interim

relief in favour of the plaintiffs-respondents. On appeal, the appellate court has allowed the appeal and parties were directed to maintain status quo as to the right of way till the final disposal of the suit. Hence, this civil revision application.

#. Having heard the learned counsel for the petitioner and going through the judgment of the first appellate court, it is difficult to say that the first appellate court's order is perverse. Its approach is perfectly legal and justified and in consonance with the approach to avoid multiplicity of the proceedings and other complication between the parties. In case alternative way is available to the defendant - petitioner then it is in the larger interest of the parties themselves not to accept his this claim at this stage to pass through the field of the plaintiffs-respondents by the court. If, such claim is permitted by declining to grant of interim injunction to the plaintiffs-respondents, it may result in multiplicity of the proceedings, possibly of criminal, civil or revenue nature between the parties. Such dispute, it is not unknown, results in manifold proceedings of the nature of criminal and civil. In the present case, the parties have fought for their alleged right before the revenue authorities, and now they are in civil court. In case the interim relief as prayed for by the plaintiffs-respondents is not granted in the suit, there is all possibilities of head-breaking, hand-braking or leg-breaking and as a result of which criminal cases between the parties. From the documents produced on the record, it is clear that, alternative way is available to the defendant-petitioner. Report of D.I.L.R. Exh.71 is very clear and therein it is difficult to read that, alternative way is not available. Alternative way is there, but it is not being used. That does not mean and cannot be said as what Mrs.Mehta, learned counsel for the petitioner contended that, alternative way is closed or not in existence. Where the alternative way is available to the defendant-petitioner the first appellate court is perfectly legal and justified in its approach to order for maintenance of status quo by the parties in respect of the disputed property.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(pathan)

